IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
TUESDAY, THE TWENTY NINETH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY
WRIT PETITION NO : 15222 of 2003

Between:
1 Smt. Rabiya Basri, W/o.Late Lal Ahmed, R/o. presently residing at 20-4-55,
Punch Mohalla, Hyderabad.
2 Syed Rahmeem Anwar Pasha, S/o. late Lal Ahmed, R/o.H.No. 20-4-55,
Punch Mohalla, Hyderabad.

..... PETITIONERS

AND

1 The District Collector, Krishna District, Machilipatnam.
2 Revenue Divisional Officer & Sub Divisional Magistrate, Bandar, Krishna District.
3 The Station House Officer, Chilakalapudi P.S., Machilipatnam, Krishna District.
4 Syed Kareem, S/o. late Lal Ahmed, R/o. 17-270, Edipally, Bandar(Mandal)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ or Writs order or direction declaring the proceedings in Rc.No. A2/365/2003, dt: 17-2-2003 issued by the respondents No.1 & 2 as illegal, arbitrary and without jurisdiction and to direct the 3rd respondent to release the pass books, cheque books and pension books of the petitioners, and consequently direct the respondents No.1 & 2 to raise the order of attachment and be pleased to pass such other orders.

Counsel for the Petitioner: MR.B.VIJAYSEN REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR REVENUE

The Court made the following:

ORDER:

The public notice issued intimating the seizure of immovable property i.e. house bearing No.17/270, Edapalli, Machilipatnam, belonging to Syed Kareem for misappropriation of Government funds of Rs.36,17,200/- under the Malversation Regulation, 1822, is the subject matter of challenge in this writ petition.

The petitioners, who are claiming to be the joint owners of the house property bearing D.No.17/270, Edipally, Chilakalapudi post, Machilipatnam, along with the 4th respondent, filed the present writ petition contending that on the death of Lal Ahmed they succeeded to the property along with the 4th respondent and are residing in the said house. While so, Crime No.12 of 2003 on the file of Chilakalapudi Police Station was registered for the offences under Sections-409, 468 and 471 of the Indian Penal Code against the 4th respondent pursuant to a newspaper publication alleging embezzlement of Government funds meant for disbursement of compensation towards the lands which were acquired. One P.Sambasiva Rao, Special Tahsildar, Land Acquisition (PWD schemes), Krishna District, Machilipatnam is the defacto-complainant. During the course of investigation, the

police found that the defacto-complainant himself is also responsible for the offences committed in Crime No.12 of 2003 and shown him as A-2. During further investigation, they visited the house of 4th respondent and as they found it locked, they broke open the lock in the presence of mediators on 05.02.2003 and seized the articles including the O.P. Register, Sub-Court, Gudivada, relates to Special Tahsildar Land Acquisition (PED) Machilipatnam Tahsildar (LA) PWD office register, (2) one Xerox copy of teared papers vide No.1742 for Rs.19,49,999/-, (3) one Xerox copy of teared paper vide No.2020 for Rs.1,70,000/-, (4) musida letter prepared by 4th respondent for four land acquisition cases on the name of Special Tahsildar Land Acquisition (PWD) Machilipatnam Tahsildar, apart from various other letters containing granting of money for acquiring lands to EE CERP (Dirnage) Division Gudivada and order from the Special Tahsildar, Land Acquisition (PWD) Machilipatnam, Tahsildar (LA) Machilipatnam for grant of funds, demand drafts, passbooks, other books, jewels and other articles under the report. Then the said report was filed before the II Additional Judicial First Class Magistrate, Bandar. They visited the house of A-2, arrested and produced him before the Magistrate and obtained judicial custody of 15 days for him and in the report it is also mentioned that R-4 is absconding. Thereafter, the 4th respondent obtained an anticipatory bail from this court in Crl.M.P.No.2177 of 2003 dated 13.05.2003 in the above Crime No.12 of 2003. When the Police are investigating into the matter, for due secure of the misappropriated

amount, the Collector who is authorized to initiate action under the A.P. Revenue Malversation Regulation (for short 'the Regulation') ordered for attachment of the immovable property of the 4th respondent and the same was published through the impugned notice.

In the counter-affidavit filed by the respondent, it is stated that the Police have found that 4th respondent was working as Senior Assistant and P.Sambasiva Rao, Special Tahsildar, being public servants misappropriated the Government funds to a tune of Rs.36,17,200/- by drawing from Revenue Deposits by way of preparation of forged bills with signatures that occurred in the O/o Special Tahsildar, L.A. (PWD) in the month of October, 2002 and November, 2002. The investigation by the Police reveals that the treasury authorities verified the genuinity of the signature of A-2 and being satisfied, issued proceedings and the 4th respondent also signed on the bills and received cash from the Bank. Since the 4th respondent was absconding and as the misappropriation of huge amounts were noticed, which were virtually drawn from the State Bank of India, Machilipatnam by producing bills, the Revenue Divisional Officer, Bandar, was requested to verify the property particulars of both 4th respondent and Sambasivaiah-A-2. Accordingly, notice under the Regulation Act was issued to 4th respondent for recovery of the amount and directing him to appear before the Collector on 06.02.2003. The notice was served on 4th respondent by means of affixture on the last known address apart from

its publication in the District Gazettee No.13/03 dated 06.03.2003 and published in the newspapers on 07.02.2003. Revenue Divisional Officer, Bandar verified the property particulars of the 4th respondent and also A-2-Sambasivaiah. Since 4th respondent-A-1 whereabouts are not known, it was ordered to seize that the property and accordingly, both movable and immovable properties have been seized. The said seizure was effected only to safeguard the interest of the Government by due execution of the order passed by the Collector. Meanwhile, questioning the notice under Section-6 of the Act, Sambasivaiah filed O.A.No.2464 of 2003 before the A.P. Administrative Tribunal, Hyderabad, in which the tribunal passed interim orders staying the recovery with a liberty to the applicant to submit his explanation to the District Collector for completing the enquiry.

Learned Counsel for the petitioners contends that only after a final order is passed for due execution, the Collector can attach the immovable properties under Section-5 of the Regulation Act but when the property belongs to the joint family, the same cannot be liable for attachment since the petitioners are also having a share in the property along with the 4th respondent. Petitioners 1 and 2 being wife and son of late Lal Ahmed succeeded to the property along with R-4 and as such the joint family property cannot be liable for attachment. The movables of the petitioners in the house were also attached.

On the other hand, the learned Government Pleader for Revenue contends that under Section-7 of the

Regulation Act, the Collector is authorized to attach the property for the due fulfillment of the judgment that may be eventually passed by him. Further, in the event of seizure of the property being claimed by any other persons, they can file their claim petition before the Collector, who can conduct an enquiry under Sections-5 and 6 of the Regulation and pass appropriate orders under Section-5 of the Regulation which reads as follows:-

> "Sentence which Collector may pass on persons convicted of certain offences (First):-
> When persons of any of the description mentioned in clause third, Section-2 of this Regulation, shall be convicted before a Collector, or an inquiry conducted under this Regulation, of any of the offences of the first, second and third class specified in clause second of that section, the Collector shall have authority to sentence them to pay any sum not exceeding twice the amount of the money ascertained to have been extorted, unduly received, embezzled or misappropriated.
> Judgments of Collectors how executed (Third):-
> The judgments of Collector for the recovery of money under the preceding clause shall be executed in the same manner as decrees of the Courts of Adalat, by a warrant under the official seal and signature of the Collector, which shall specify the name of the person against whom the judgment has been passed, the date of the judgment on the Collector's proceedings and the amount to be levied. In the execution of this warrant the property of the defaulter shall be seized wherever, or in whose possession soever, it may be found. If property, which there is good reason to believe belongs to the defaulter, be claimed by any other person, the same shall nevertheless be attached by the officer charged with the execution of the warrant. If the property so attached be movable, it shall be brought before the

Collector, or if not movable, a full report thereof shall be made to the Collector who will hold a summary inquiry on the claim preferred, or refer such inquiry to a Panchayat. If the property be proved to belong bona fide to the defaulter, a particular account of its nature and value shall be entered on the Collector's proceedings, after which he shall order it to be sold in like manner as the rest of the property attached under the warrant of execution."

Section-7 of the Regulation reads as follows: -

"When Collectors may call on suspected persons to give security for fulfillment of judgment: -

Whenever a Collector shall be about to institute an inquiry under this Regulation, if he shall have good reason to believe that the accused or suspected person has on concealed or collusively transferred or is about to conceal or collusively transfer, his property, for the purpose of evading such order or judgment as may eventually be passed after such inquiry, the Collector is hereby authorized to call on such person to give security to such amount as he may consider sufficient to provide for the fulfillment of the judgment that may be eventually passed; and in default of good and sufficient security being given as required he shall be authorized to attach the property of the accused or suspected person, and to hold the same in attachment until judgment shall have been passed in the said inquiry.

The warrant of attachment to be issued in such cases shall follow the property of the accused or suspected person, wherever or in whose possession soever it may be found.

In the event of property seized under this section being claimed by any other person, the Collector shall proceed as directed in like case in clause third Section-5 of this Regulation."

The Collector, after due enquiry into the matter, prima facie came to the conclusion that 4th respondent with the

connivance of the other accused misappropriated the public funds which are meant for disbursement to the land losers in whose favour award was passed and in exercise of his power conferred under Section-7 of the Regulation, rightly issued proceedings ordering seizure of immovable and movable properties of the 4th respondent for due recovery of the amount misappropriated by him until judgment or liability is fixed. If the petitioners are aggrieved by the said publication of the notice or attachment, it is always open for them to lodge their claim before the Collector, who will conduct an enquiry as per Third category of Section-5 of the Regulation and pass appropriate orders. If the petitioners are aggrieved by the attachment of the immovable properties, which was produced by the Police before the II Additional Judicial First Class Magistrate, Bandar, it is always open for the petitioners to approach the said Magistrate for release of the said property, which was attached during the course of investigation of the crime. In view of the same, I do not find any merit in the contention that the notice per se issued by the Collector is without jurisdiction.

Accordingly, the writ petition is disposed of. No costs.

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(A.GOPAL REDDY, J)

29.06.2004

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To

1 The District Collector, Krishna District, Machilipatnam.

2 Revenue Divisional Officer & Sub Divisional Magistrate, Bandar, Krishna District.

3 The Station House Officer, Chilakalapudi P.S., Machilipatnam, Krishna District.

4 Two CCs to Government Pleader for Revenue, High Court Buildings, Hyderabad (OUT)

5 Two CD copies.

High Court of A.P.,